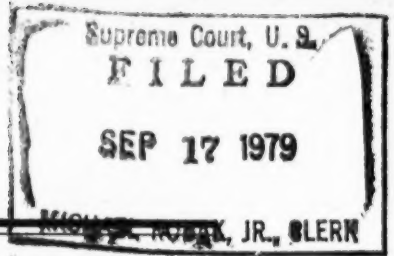


No. 79-211



In the Supreme Court of the United States

OCTOBER TERM, 1978

EDWARD J. ALEXANDER, D/B/A STRAND THEATER,
K.I.M.Y.B.A. CORP., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT*

**MEMORANDUM FOR THE NATIONAL LABOR
RELATIONS BOARD IN OPPOSITION**

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

JOHN S. IRVING
General Counsel
National Labor Relations Board
Washington, D.C. 20570

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The petition for a writ of certiorari was not timely filed. The judgment of the court of appeals (App., *infra*) was entered on May 9, 1979. Under 28 U.S.C. 2101(c), the petition for a writ of certiorari was due to be filed within 90 days after the entry of judgment, *i.e.*, by August 7, 1979. The petition was not filed, however, until August 9, 1979 (a Thursday). No extension of time was sought. The time limit specified by 28 U.S.C. 2101(c) is jurisdictional. *Toledo Scale Co. v. Computing Scale Co.*, 261 U.S. 399, 417-418 (1923).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

JOHN S. IRVING
General Counsel
National Labor Relations Board

SEPTEMBER 1979

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
NATIONAL LABOR RELATIONS BOARD,
PETITIONER,

v.

EDWARD ALEXANDER, d/b/a STRAND
THEATRE, K.I.M.Y.B.A., CORP.,

Respondent.

No. 78-1629

JUDGMENT

Before: GIBSON, Chief Judge, HENLEY, Circuit Judge,
and HANSON, Senior District Judge.*

THIS CAUSE came on to be heard upon an application of the National Labor Relations Board for enforcement of an order issued by it against Respondent Edward Alexander, d/b/a Strand Theatre, K.I.M.Y.B.A., Corp., Duluth, Minnesota, its agents, officers, successors, and assigns, on May 8, 1978. The Court, heard argument of respective counsel on February 18, 1979, and has considered the briefs and transcript of record filed in this cause. On April 17, 1979, the Court being fully advised in the premises, handed down its opinion granting enforcement of the Board's Order. In Conformity therewith it is hereby

ORDERED AND ADJUDGED by the United States Court of Appeals for the Eighth Circuit that the said order of the National Labor Relations Board in said proceeding be enforced, and the Respondent, Edward Alexander, d/b/a Strand Theatre, K.I.M.Y.B.A., Corp., Duluth, Minnesota, its agents, officers, successors, and assigns, abide by and perform the directions of the Board in said order contained.

(See attached sheet for cost information.)

ENTERED: May 9, 1979

A true copy

Attest:

Robert C. Tucker

Clerk, U.S. Court of Appeals, 8th Circuit

June 4, 1979.

TAXATION OF COSTS IN CASE NO. 78-1629:

COSTS TAXED IN FAVOR OF PETITIONER:

Costs of preparation of record and brief:	<u>\$66.28</u>
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Total costs of Petitioner for recovery from Respondent:	\$66.28
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